

**IN THE HIGH COURT OF JUDICATURE AT
BOMBAY**

(Ordinary Civil Jurisdiction)

[Under Rule 4(e) (ii) of The Bombay High Court Public Interest Litigation
Rules, 2010]

INTERIM APPLICATION NO. _____ OF 2021

IN

Public Interest Litigation (L) No 10276/2021

Indian Medical Association

(Particulars of IMA to be inserted)

Through Dr Ashutosh Jape

Intervener Indian Medical Association, Pune,

C/O IMA Pune, Dr. NituMandke IMA House,

992 ShukrawarPeth, Tilak Rd, Pune 411002

...APPLICANT (INTERVENOR)

IN THE MATTER OF :-

SNEHA NIRAV MARJADI

Age 30 years, Occu. Advocate

Office address at T-2, 3rd floor,

Machinery House, B.B. Road,

Kala Ghoda, Fort,

Mumbai-400 023.

. PETITIONER

Versus

01. State of Maharashtra

Through its Chief Secretary of
The Public Health Department,
Government of Maharashtra,
Having its office at G.T. Hospital
Complex Building, 10th floor,
Mantralaya,
Mumbai-32.

02. Municipal Corporation of Greater

Mumbai (M.C.G.M.)
Through the Public Health Department,
Having address at MCGM Building,

Opp. CST Railway Station, Fort,
Mumbai-400 001.

03. Union of India

Through Ministry of Health and Family
Welfare having address at
Room No.348, 'A' Wing,
Nirman Bhawan,
New Delhi 110 001.

.. RESPONDENTS

To,
The Hon'ble the Chief Justice
and Companion Hon'ble Judges
of High Court, Mumbai

Humble Interim Application of the Applicants
above-named:

MOST RESPECTFULLY SHOWETH AS UNDER:

1. The Applicant has been allowed to intervene in the main PIL No.10276 of 2021 on the oral request made by it during the course of hearing that was held on 27/04/2021. The said order dated 27/04/2021 is at **EXHIBIT 'A'**. Thereafter, the Applicant-IMA has filed a number of Affidavits in order to assist this Hon'ble Court on the various issues involved in the PIL, that this Hon'ble Court was considering. As regards the protocol to be followed by the Doctors for Covid-19 treatment, Dr. Rajeev Digambar Joshi has made detailed oral submissions which were patiently heard by this Hon'ble Court. As per directions of the Division Bench comprising Hon'ble Chief Justice Shri Dipankar Dutta and Shri Girish Kulkarni-JJ, Advocate General was informed about all atrocities caused to the doctors by the administration.
2. The applicant submits that as regards the information about the availability of beds to the patients, the

Applicant had appraised this Hon'ble Court about the work done by Dr. Rajeev Joshi in this regard. Accordingly, he had given demonstration to the Additional Municipal Commissioner, who forwarded his proposal to the Divisional Commissioner. The issue is pending in the office of the Divisional Commissioner, Pune and no progress has been made. The Applicant states that IMA has made submission to this Hon'ble Court that the C-Dac is ready to train the Municipal Corporation officials to prepare the real time dashboard. For this purpose, Dr. Rajeev Joshi had taken initiative and contacted Mrs. Manisha Mantri of C-Dac, who had agreed to speak to anybody in the government in this regard. Accordingly, through the learned Advocate General Mr. Sudhakar Deshmukh from the Public Health Department was contacted. Dr. Joshi personally explained to him the necessity of a real

time dashboard. It appears that no further progress has been made.

3. The applicant submits that during the course of hearing on 13/07/2021, it had raised issues regarding indiscret arrest of Medical Professionals despite the law laid down in Lalita Kumari and Dr. Jacob Mathew' case. In this regard, this Hon'ble Court was pleased to request the learned Advocate General to advise the State Government to frame guidelines in this regard. Hereto annexed and marked as **EXHIBIT 'B'** is the copy of the order dated 13/07/2021 in Criminal PIL No.2332 of 2020. The said Guidelines are still awaited.
4. The applicant states that, the applicant has already submitted through its various affidavits as under:-
 - a. That no legal action should be initiated against any medical professional or doctor during the pandemic until further orders of the Court.

- b. Need of electrical audit was stressed but the Government has not paid any heed to the suggestions given by the association.
 - c. Wards having no special electrical circuits for ventilators and allied equipment were converted into Intensive Care Units and the gadgets were operated without proper circuits.
 - d. Due to overload and overuse there could be electrical short-circuits. No action was taken to rectify this issue which has caused fires in many hospitals.
 - e. The applicant had highlighted the reasons for increased incidences of fire in COVID-19 wards i.e. cocktail of oxygen and alcohol vapour, curtains and electrical short circuits.
5. The applicant submits that, in this matter, this Hon'ble Court had directed the Government to file an Affidavit regarding fire and electrical audit in view of the guidelines of Hon'ble Supreme Court in the case of suo

motu WP No.7 of 2020 (12772 of 2020). The said order dated **19/07/2021** of the Hon'ble Supreme Court is at **EXHIBIT 'C'** The copy of the order passed by this Hon'ble Court dated 02/08/2021 in WP No.10276 of 2021 is at **EXHIBIT 'D'**. In this order the High Court directed as under.

“We grant the State a month’s time to file an additional affidavit indicating therein compliance of all the directions given by the Supreme Court as well as this Court to prevent fire at hospitals treating COVID-19 patients as well as patients admitted therein for treatment and care.”

However the government has neither filed any affidavit in this regard nor has it taken any action to improve the situation.

6. The applicant submits that, for want of these guidelines regarding the fire audit of hospitals an unfortunate incident of fire occurred at Ahmednagar on 6th

November 2021 in which 11 patients have died and 6 have suffered burn injuries due to gross negligence of the Government Officers. In this regard -

- a. There is correspondence between District Civil Surgeon Ahmednagar and various government authorities such as Director of Health Services, District Collector and Public Works Department and District Planning etc.
- b. In 11 letters from 23/01/2021 to 28/10/2021 in which there is internal reference to 23 more communications. This correspondence is tabulated in Exhibit R1 at page 13 and the Applicant submits that, the State Government may be directed to produce before this Hon'ble Court all the files in this regard and further place on record the steps taken by it to implement the requests made by the concerned Officers. A table containing a gist of Marathi letters

with all particulars is at **EXHIBIT 'E'**. The record reveals that -

(i) The Government authorities have discussed and deliberated on fire and electrical safety but have not taken any measures to prevent fire in the said hospital.

(ii) On 7th October 2021, the Dy Director Health services, Nashik division in its letter UpSmAaSe/ Arthabhandar / FireAudit / 30976-82 / 21 expressed deep dissatisfaction for not taking any action in this regard. This letter is not available to the applicants hence we request the court to direct the Government to submit these letters to Hon'ble Court.

7. The applicant states that, it can be seen from correspondence that for one district hospital of Ahmednagar, there was a need of Rs. 5,70,63,738 (Five Crores, Seventy Lacs, Sixty Three Thousand, Seven Hundred Thirty Eight only) for installation of necessary gadgets to prevent fire. The gadgets were not

installed putting the life of patients as well as staff in hospital and doctors in danger.

8. The applicant states that, the State Government may be directed to place on record of this Hon'ble Court the steps taken by it to utilize the necessity gadgets. What fund is allocated in the state for this purpose?
9. Government Authorities overlooked their responsibilities. In reality a resident doctor and nurses who tried to save patients from the fire were held responsible for the fire. The applicant states that one Dr Vishakha Shinde, a resident doctor from Ahmednagar was made scapegoat to cover up the inefficiency of the Administration. An FIR was registered against her and she was arrested like a criminal . The copy of the order on C.R. I-981 of 2021 of Tophkhana Police Station is annexed as **EXHIBIT 'F'** .
10. The applicant submits that, said Dr. Vishakha Shinde has been working as a resident doctor in Orthopedics

(D Ortho) from 29/09/2020 till today. The copy of the common Appointment order is at **EXHIBIT 'G'**. The applicant further states that being a student doctor, she was never allocated any administrative work in the hospital. The year 2020-21 being the peak of the Corona Pandemic, she was working as a helping hand to the consultants treating Corona patients in ICU. She is a student doctor and therefore the service she is providing is akin to an “on job training” and therefore she is in no way liable or responsible for any of the infrastructural deficiencies, provisions of maintenance nor having any control over any other factors such as wiring, appointment of ward boy, provision of fire extinguishers, clearances of CFO etc but her physical presence and working. In fact she deserves to be protected from fire and any hazard that may befall upon the hospital and premises in which she is providing services.

11. The applicant submits that Dr. Vishakha Shinde was on duty in the ICU of Corona patients / Ward of orthopedics on the day on which there was a fire in Government Hospital Ahmednagar in which 11 patients admitted in COVID-19 ward died due to burns and suffocation.
12. The applicant says and submits that she had nothing to do with the cause of the fire which was due to electrical short circuit as well as a cocktail of increased oxygen concentration in the air due to leakage from masks and due to vapor of alcohol from sanitizer.
13. Going into the ICU filled with fire and smoke, she had personally evacuated 4 patients from the ward but before the rest of the patients could be evacuated the blaze of fire suddenly became unmanageable because of the reason given above. The applicant's heart goes for the unfortunate victims of this tragic accident. But the

applicant is proud that she could do everything that was possible in the line of duty.

14. In spite of having nothing to do with the cause of fire or the administrative work, she was arrested by the police under an FIR filed by Zubed Ahmednagar Chansaheb Mujawar on 06/11/2021. **EXHIBIT 'H'** and its translation is annexed as **EXHIBIT 'I'**. This FIR is filed u/s 304A against an unknown person. It is not clear how and why Dr Vishakha Shinde was arrested as one of the accused.
15. The Police Custody Remand Application was filed on 10th November 2021 annexed hereto as **EXHIBIT 'J'** and its translation as **EXHIBIT 'K'**. The remand application is against anonymous accused. It says the aforesaid medical officers and staff did not remain present and have intentionally committed dereliction in their duty of protecting the lives of the patients and the government property and failed to take measures to

save the life of the patients in the I C U ward no 1, despite being aware of the same, failed to take appropriate security measures, resulting in the demise of eleven aforesaid individuals and serious injuries to six patients admitted therein. Hence section 304 of the Indian Penal Code has been included in the investigation of the said offence. The PCR states that The accused are government servants and have been the cause for endangering the lives of the patients and their demise. The accused is highly educated and there is a possibility of tampering the evidence in the offence by them. So much for people who tried to save patients from fire which broke out. It goes on further to say that only patients are deceased in the said fire incident and the staff on duty has not suffered any injuries. The reasons therefore are required to be ascertained by taking the arrested accused into confidence.

16. The applicant submits that Dr. Shinde had applied for bail through advocates, but the JMFC court refused to grant bail. Remand Order dated 10/11/2021 in C.R.No I-981/2021 of Tophkana Police Station is annexed hereto as **EXHIBIT 'L'**. The learned Judge observed that above grounds are important and innocence of the accused can be concluded only after investigation, hence custodial interrogation is necessary.
17. The police applied for Magistrate Custody Remand vide application dt 12/11/2021 Annexed hereto as **EXHIBIT 'M'** and its translation is annexed as **EXHIBIT 'N'**. In this application the allegation is that the accused have failed in their duties as Government Servants about which they were aware and were responsible for the ICU catching fire and also propagation in the fire because of which lives were lost. The application says that despite being aware that dereliction in duty may cause danger to the life of the

patients, the aforesaid medical officers and staff did not remain present and have intentionally committed dereliction in their duty of protecting the lives of the patients and the government property

18. The applicant states that, said Dr. Vishakha was put behind bars from 08/11/2021 to 21/11/2021 for none of her faults and her fundamental rights of life and liberty were taken away from her.
19. Thereafter, Dr. Vishakha Shinde applied for bail in the Sessions Court which granted her bail on 18/11/2021. Order of the District Court is annexed hereto as **EXHIBIT 'O'** . The learned judge held that the incident was tragic and serious. However the FIR itself gives the answer that the nurses and the doctors were there in the ward or its vicinity and it can be seen in the video that hospital staff are taking efforts to rescue patients. Though she has been released on bail stringent conditions are imposed upon her.

20. Applicant would like to point out that Gross injustice caused to her is evident from news item in times of India dt Nov 18 2021 annexed **EXHIBIT 'P'**. She was not only put behind the bars illegally, she was removed from her job and then reinstated as there was misunderstanding in the Government. Hereto annexed and marked as **EXHIBIT 'Q'** is the copy of the order No.39643-48/2021 dated 8/11/2021 removing her from the job **EXHIBIT 'R'** is the copy of the order No.39779-87 dated 10/11/2021 reinstating said Dr. Shinde
21. The applicant states that, Indian Medical Association, Ahmednagar had helped her in the abovementioned legal process as her father is a retired school teacher and as a resident doctor she can not afford heavy fees of advocates practicing in criminal courts. It is beyond her resources to take up this legal and judicial expenditure.

22. The applicant feels that the gross injustice has been caused to her and the medical fraternity is insulted by the administration . It would not be out of place to mention here that, during the covid crisis the same medical fraternity and the support staff had endangered their life and were working day and night at the cost of their family life. Under the circumstances, it is highly improper to treat the medical professionals like criminals and arrest them.
23. The applicant states that, in view of the gross injustice caused to her and many other doctors, the applicant is filing this interim application to request this Hon'ble Court to pass suitable orders so that doctors working in COVID-19 wards are not harassed in the manner in which she and other doctors were harassed.
24. The applicant submits that since the allegation against Dr. Vishakha Shinde pertained to her functioning as a medical professional in Covid-19 ward, the guidelines in

‘Lalita Kumari & Dr. Jacob Mathew’s case did apply. Therefore, her arrest is illegal. In the circumstances, the applicant has filed this Interim Application inter alia praying therein that Medical Professionals be given immunity from arrest while treating Covid-19 patients.

25. PRAYERS:

The Applicant, therefore, most respectfully prays that –

- (a) this Hon’ble Court may direct the respondents to place this Hon’ble Court all the files pertaining to the fire safety audit of Ahmednagar Civil Hospital containing the correspondence annexed at **EXHIBIT ‘E’** and direct that appropriate disciplinary action may be taken against those who are responsible for not fitting the necessary gadgets well in time for prevention of fire. This Hon’ble Court may further direct that criminal proceedings may be

initiated against the said responsible government officials.

- (b) The State Government may be directed to place on record the budgetary allocation made for safety of government hospitals all over State of Maharashtra and the patients admitted therein and medical staff and doctors working in these hospitals.
- (c) The C.R.No.I-981 of 2021 dated 06/11/2021 registered with the Tophkhana Police Station, Ahmednagar as regards Vishakha Rajendra Shinde Age 29 years residing at flat no 2, A wing, Dream City Society, Near Nagar Kalyan Highway, Ahmednagar may kindly be quashed and set aside.
- (d) This Hon'ble Court may direct the respondents to frame mandatory guidelines regarding arrests of medical professionals while treating

the Covid-19 patients and also regarding the disciplinary action against them.

- (e) this Hon'ble Court may direct the respondents to grant immunity against criminal action and disciplinary action or any other action to medical professionals while treating Covid-19 patients
- (f) all other just and necessary Orders may kindly be passed in favour of the applicants.

For this act of kindness and justice, the applicant above named as duty bound shall ever prays.

Mumbai

(Nitin P. Deshpande)
Advocate for Applicant

Dated :November _____, 2021

AFFIRMATION

I, Dr Ashutosh Dinkar Jape, Aged about 49 years, Occu. : Medical Practitioner R/o: Gajanan Prasad, 4, Anand Colony, Karve Nagar, Pune-411 052, above named applicant, do take oath and state on solemn affirmation that I have gone through the memo of above Writ Petition. I say that the contents of para Nos.1 to 25 are the statements of facts and the same are true to the best of my knowledge, while the contents of the remaining paragraphs are true to the best of our belief.

Solemnly affirmed at Pune on this 27th day of November month of the year 2021.

Affiant

Dr Ashutosh Dinkar Jape

I know Affiant.